



# San Diego City Attorney **MICHAEL J. AGUIRRE**

## MEDIA ADVISORY

**FOR IMMEDIATE RELEASE: November 20, 2007**

Contact: Maria Velasquez, Communications Director: (619) 235-5725 [mvelasquez@sandiego.gov](mailto:mvelasquez@sandiego.gov)

### **CITY ATTORNEY NEWS BRIEFING**

#### **RETIREMENT BOARD DECISION TO BURDEN TAXPAYERS WITH \$146 MILLION PENSION BILL MUST BE REVERSED**

#### **NAMES OF RETIRED CITY EXECUTIVES WHO ARE FEASTING THIS THANKSGIVING WITH LAVISH PENSION BENEFITS IN VIOLATION OF IRS REGULATIONS**

**Date and Time: Tuesday, November 20, 2007 at 11 a.m.**

**Where: City Hall, 202 C Street, 13<sup>th</sup> Floor Pressroom, downtown San Diego**

The City Attorney's Office briefed the news media about three matters of importance to all San Diegans. City Attorney Michael Aguirre was out-of-town. Speaking on his behalf were Executive Assistant City Attorney Don McGrath and Chief Deputy City Attorney Mark Blake.

- **LAWSUIT FILED AGAINST THE SAN DIEGO CITY EMPLOYEE'S RETIREMENT BOARD**  
**Executive Assistant City Attorney Don McGrath**

The City Attorney's Office filed a complaint in Superior Court today against the San Diego City Employees' Retirement Board (SDCERS) in order to protect the City and its taxpayers.

Last Friday, the Retirement Board voted to stick taxpayers with a \$146 million bill to pay for a controversial retirement benefit that allowed City employees to purchase up to five years of retirement credits for years not worked, and below their actual cost.

"Nowhere but in the City of San Diego can you get such a deal---buy a retirement year without even working, pay a discounted price for it and require taxpayers to make up the difference," said Executive Assistant City Attorney Don McGrath. "It is time for the citizens of San Diego to say enough is enough! There is no money to pay for these excessive and unfunded pension benefits and yet they will be paid out of the general fund---the same fund that is used to pay for City services such as street maintenance, libraries, pools, and parks."

(more)

It is also time for city employees to understand that the pension benefits that were brokered by their unions were irresponsible and are unsustainable. The City Attorney's Office is doing its job by exposing the mistakes and trying to correct them.

As for the Mayor—some would say he has retreated from holding the Retirement Board accountable for underpricing retirement years. On September 21<sup>st</sup>, when it was confirmed by the Pension Board that the Purchase of Service Credit program had resulted in \$146 million liability to the pension system the Mayor stated:

“I am angered by this revelation and find it to be completely unacceptable...I strongly urge the Retirement System's trustees to do everything within their power to correct the problem immediately. Unless they take decisive corrective action, the taxpayers will end up paying the price for a program that should be cost neutral to the city.”

That same day, the Mayor asked the City Attorney to provide the Mayor's Office with unilateral options that the City could take to rescind the \$146 million in pension liability resulting from the Purchase of Service Credit program. In response, on September 24<sup>th</sup>, the City Attorney prepared two ordinances to amend the San Diego Municipal Code to require any benefit paid for creditable service purchased under section 24.1312 to not exceed the actual value of the amount paid for the creditable service. To date there has been no response on the matter from either the Mayor's Office or City Council President Scott Peters.

Clearly, the Mayor and City Council need to take immediate action to reverse this \$146 million dollar travesty that the Retirement Board has sent to the City. It is the only responsible thing to do on behalf of the City and its taxpayers.

- **NAMES OF RETIRED CITY EXECUTIVES**  
**Executive Assistant City Attorney Don McGrath**

The City Attorney's Office released the names of retired City executives who are having a happy Thanksgiving while feasting on lavish excess pension benefits that are in violation of IRS regulations.

One Hundred Two retired city employees are receiving pension benefits in excess of Internal Revenue Service (IRS) limits. The benefits have been paid by the San Diego City Employees' Retirement System (SDCERS) since 2001, in violation of IRS Code 415 (b).

The amount paid is over and above what the IRS sets as the reasonable nationwide limit on what a public agency can pay an employee in retirement. To date, the total overpayment through 6/30/07 is more than \$8 million and could jeopardize the tax-exempt status of the plan.

“The list released today includes City officials who played a role in creating our current financial mess--City officials who stood to reap the benefits of these pension giveaways,” said McGrath.

1. Former City Attorney Casey Gwinn who retired in 2004 at the ripe old age of 44 has received \$213,000 in excess pension benefits.

(more)

2. Former Deputy City manager Bruce Herring was one of the principal architects of MPI and MPIO, the labor deals in 1996 and 2002 that saw the City increase employee pension benefits in exchange for under funding the pension system. Since retiring Herring has received \$201,306 in excess pension benefits.
  3. Keith Enerson, a former Assistant Police Chief, was president of the SDCERS Board in 1996 when the first labor deal was approved. Enerson has received \$376,830 in excess pension benefits.
- **MAYOR'S RUSH TO BOND MARKET IGNORES FEDERAL REQUIREMENT FOR ACCURATE FINANCIAL DISCLOSURES**  
**Chief Deputy City Attorney Mark Blake**

The City Attorney has reviewed the Mayor's November 19, 2007 memorandum to the City Council in which he outlines his plan to access the public capital markets, and accuses the City Attorney of using obstructionist tactics to slow the City's return.

In a November 20, 2007 memorandum to the City Council, the City Attorney expressed his desire to bring the City current with respect to all of its financial statements and to access the public capital markets as soon as practicable. However, the City Attorney's office is obligated to ensure that the information presented to the capital markets is credible, reliable and reflects a complete understanding of the City's financial health.

The City's Disclosure Practices Working Group (DPWG), Controls and Procedures, sets out a 270-day period to complete an offering document. By its very terms this is intended to be overly cautious and deliberate, with an eye toward checking and rechecking the information that would reach the financial markets.

The City Attorney fully intends to continue to cooperate with the Mayor's Office to pursue prudent financings. But given the continued questions being raised regarding the City's retirement plan and the reliability of information from the SDCERS, the City Attorney believes that the rush by the Mayor to the capital markets simply to keep a campaign promise is unsound.

###